Mississippi Electronic Courts
Fifth Chancery Court District (Hinds Chancery Court - Jackson)
CIVIL DOCKET FOR CASE #: 25CH1:17-cv-000309

THE STATE OF MS ex rel. JIM HOOD, ATTORNEY GENERAL for the STATE of MS v. ENDO PHARMACEUTICALS INC.
Assigned to: J. Dewayne Thomas

Date Filed: 03/10/2017
Jury Demand: None
Nature of Suit: 177 Fraud
Jurisdiction: General

Plaintiff

THE STATE OF MS ex rel. JIM HOOD, ATTORNEY GENERAL for the STATE of MS

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V.

Defendant

ENDO PHARMACEUTICALS INC.

represented by **ENDO PHARMACEUTICALS INC.**
PRO SE

Date Filed	#	Docket Text

03/10/2017	2	COMPLAINT against ENDO PHARMACEUTICALS INC., filed by THE STATE OF MS ex rel. JIM HOOD, ATTORNEY GENERAL for the STATE of MS. (Attachments: # 1 Civil Cover Sheet) (TS) (Entered: 03/10/2017)
03/10/2017	3	SUMMONS Issued for service upon ENDO PHARMACEUTICALS INC.. (TS) (Entered: 03/10/2017)
03/13/2017	4	NOTICE of Appearance by Michael S. Smith, II on behalf of THE STATE OF MS ex rel. JIM HOOD, ATTORNEY GENERAL for the STATE of MS (Smith, Michael) (Entered: 03/13/2017)
03/27/2017	5	SUMMONS Returned Executed by THE STATE OF MS ex rel. JIM HOOD, ATTORNEY GENERAL for the STATE of MS. ENDO PHARMACEUTICALS INC. served on 3/23/2017, answer due 4/22/2017. Service type: Certified Mail (Hawthorne, Alison) (Entered: 03/27/2017)
04/17/2017	6	NOTICE of Notice of Removal by ENDO PHARMACEUTICALS INC. (Attachments: # 1 Exhibit A - Notice of Removal) (Maron, David) (Entered: 04/17/2017)

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**IN THE CHANCERY COURT FOR THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

FILED
MAR 10 2017
EDDIE JEAN CARR, CHANCERY CLERK
BY T. Simmons D.C.

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD,
ATTORNEY GENERAL for the STATE of MISSISSIPPI

PLAINTIFF

v. **Civil Action No ____________**

ENDO PHARMACEUTICALS INC.

DEFENDANT

COMPLAINT

Plaintiff, the State of Mississippi, by and through its Attorney General (hereinafter "the State") files this Complaint against the above-named Defendant and alleges, on information and belief, the following:

I. INTRODUCTION

1. The Defendant has taken advantage of the enormously complicated and non-transparent market for prescription drugs by engaging in an unlawful scheme to cause the State of Mississippi to pay for drugs that were not eligible for Medicaid reimbursement and had not received approval by the Food and Drug Administration ("FDA"). The scheme involves representations by the Defendant to the State that its National Drug Codes ("NDCs") are FDA approved and eligible for Medicaid reimbursement when in fact, they are not. The State directly relies on these representations in approving the reimbursement for providers of prescription drugs. Defendant marketed these unapproved drugs to healthcare providers as being Covered Outpatient Drugs, and therefore reimbursable by the State. Defendant's fraudulent marketing of its unapproved prescription drugs has resulted in increased market share and profits for the

Defendant while causing the State to pay for Defendant's products that would otherwise not be covered by Medicaid. The Defendant's NDCs are attached hereto as Exhibit A, which includes the estimated relevant time period for each NDC at issue. The drugs listed on Exhibit A were manufactured, marketed, distributed, and/or sold during the relevant time period by Defendant, which may include its predecessor entities and/or all of its past and present components, subsidiaries, and affiliate entities, by contractual agreement and/or by having substantially the same business purpose, operation, customers, management, and/or ownership, including but not limited to Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc.

2. Fair and appropriate drug reimbursement is a matter of great importance to the State and its citizens. Expenditures by the State for prescription drug reimbursements have increased dramatically in the past several years as a result, in part, of Defendant's fraudulent scheme of marketing unapproved drugs. Each year Mississippi spends hundreds of millions of dollars on prescription drugs under the Mississippi Medicaid program. For example, in fiscal year 2011, Mississippi Medicaid spent approximately $551 million on prescription drugs. The increase in prescription-drug costs has contributed to a healthcare-funding crisis within the State that requires action to ensure fair dealing between Defendant and the State.

3. The misinformation marketed and disseminated by Defendant throughout the healthcare industry, both publicly and privately, caused claims for uncovered, ineligible products to be submitted to the State. The State, in reliance on the Defendant's representations that its drugs were eligible for reimbursement, reimbursed providers for drugs not covered by the Medicaid program.

4. The State is accountable to its citizens and taxpayers for how it spends limited State resources, and it is obligated to pursue any party whose unlawful conduct has led to the overspending of State funds. Consequently, the State, by and through its Attorney General, brings this action to recover all amounts paid for unapproved and ineligible prescription drugs by the State as a result of the fraudulent and deceptive conduct of Defendant. The State further seeks to require Defendant to account for and disgorge all profits obtained by it as a result of its improper and unlawful actions.

5. This lawsuit seeks legal and equitable redress for the fraudulent, willful and wanton reporting conduct of Defendant, who has profited from its wrongful acts and practices at the expense of the State.

II. PARTIES

6. This action is brought for and on behalf of the sovereign State of Mississippi and its citizens, by and through Jim Hood, the duly elected and current Attorney General of the State of Mississippi, pursuant to, *inter alia*, the Mississippi Constitution, Miss. Const. art. 6 § 173 (1980), the provisions of Mississippi's Medicaid Fraud Control Act, Miss. Code Ann. § 43-13-219 *et. seq.*, Mississippi's Regulation of Business for Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et. seq.*, and the common law and statutory authority of the Attorney General to represent the State of Mississippi and its residents.

7. The Defendant named in this Complaint shall include all of its predecessor entities and all of its past and present components, subsidiaries, and affiliate entities, by contractual agreement and/or by having substantially the same business purpose, operation, customers, management, and/or ownership.

Defendant

8. Defendant Endo Pharmaceuticals Inc. ("Endo" and/or "Defendant") is a Delaware corporation with its headquarters in Malvern, PA. On February 3, 2014, Defendant Endo purchased Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc., which was a Florida corporation engaged in the business of manufacturing, distributing, marketing, and/or selling pharmaceuticals with its principal place of business in Coral Springs, FL.

9. Endo, and formerly Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc., conducts business throughout the State of Mississippi. Endo regularly and continuously conducted business within this Judicial District and unlawfully derived substantial revenue from transactions and occurrences conducted within this Judicial District.

III. JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to Miss. Code Ann. § 9-5-81 and article 6 Section 159 of the Mississippi Constitution, in addition to the fact that all the claims asserted herein arise exclusively under Mississippi statutory or common law.

11. The State of Mississippi asserts no claims governed by federal law, as all claims herein are exclusively state law claims for relief. The State of Mississippi makes no claim that would give rise to federal jurisdiction, nor does the alignment of the named parties create federal jurisdiction.

12. The issues presented in the Complaint herein do not implicate significant or substantial federal issues and do not turn on the necessary interpretation of federal law. The State expressly asserts that the only causes of action asserted and the only remedies sought herein, are founded upon the statutory, regulatory, common, and decisional laws of the State of Mississippi.

The Complaint herein does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332 and does not invoke federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The assertion of federal jurisdiction over the claims asserted herein would improperly disturb the Congressionally-approved balance of federal and state responsibilities. Accordingly, any attempt to remove this case to federal court would be without a reasonable legal basis in fact or law.

13. This Court has personal jurisdiction over the Defendant pursuant to Miss. Code Ann. § 13-3-57 because the Defendant does business and performs work or service in this Judicial District, State and County, purposefully directs or directed its actions in this Judicial District, State and County, and/or has the requisite minimum contacts with this Judicial District, State and County necessary to constitutionally permit the Court to exercise jurisdiction.

14. Venue is proper pursuant to Miss. Code Ann. §§ 11-11-3 and 11-5-1 as this Defendant caused a substantial act or omission to occur or caused a substantial event that caused injury to the State to occur in this Judicial District and this Defendant may be found in this Judicial District. This Defendant, individually or in conjunction with others, supplies, markets, sells, promotes, advertises, distributes, and otherwise seeks Medicaid reimbursements from the State in Mississippi, and specifically, within Hinds County.

IV. STATEMENT OF FACTS

15. The Mississippi Medicaid program is a state-administered program with federal matching funds that pays for medical care, including prescription-drug benefits, for Mississippi's children and low-income, elderly, and disabled citizens. Mississippi Medicaid currently covers about 644,000 individuals. In 2008, prescription-drug benefits represented

nearly 10% of Mississippi Medicaid's annual budget. The total annual cost of prescription drugs to Mississippi Medicaid continues to increase exponentially, with an annual cost of about $488.4 million during fiscal year 2014. Mississippi Medicaid reimburses medical providers, including pharmacies, for drugs prescribed for and dispensed to Mississippi Medicaid recipients.

16. In order for its drugs to be eligible for reimbursement, the Defendant must enter into a Medicaid Drug Rebate Agreement, which requires Defendant to expressly represent which drugs are eligible for Medicaid reimbursement and submit a list of all Covered Outpatient Drugs, identified by NDC number, quarterly. Covered Outpatient Drugs are generally defined as those that may only be dispensed by prescription and are approved for safety and effectiveness as a prescription drug by the FDA. Thus, unapproved drugs, including those deemed less than effective by the FDA, and non-drug products, such as vitamins, are not Covered Outpatient Drugs eligible for reimbursement.

17. Defendant entered into the Medicaid rebate agreement. By signing the rebate agreement and participating in the Medicaid program, Defendant agreed to abide by all laws, regulations, and procedures applicable to Medicaid. Specifically, by participating in the Medicaid program, Defendant assumed a duty not to mislead the State when reporting information regarding its drugs covered by Medicaid.

18. Defendant submits lists of its Covered Outpatient Drugs to the Center for Medicare and Medicaid Services ("CMS") and reaffirms and updates those lists quarterly. The states receive these lists from CMS and continuously rely on the Defendant's information for determining drug reimbursement eligibility. The Defendant knows the states rely on these

covered drug lists. Furthermore, the Defendant expects the states to populate their covered drug formularies based upon these lists. The Defendant knew the State of Mississippi continuously reimbursed for its drugs, and thus, there existed at all relevant times a duty owed to the State and its Medicaid agency by the Defendant to inform the State of the eligibility status of its drugs on a continuing basis.

19. Reimbursement for prescription drugs under Mississippi Medicaid is based on the information supplied by the Defendant. However, the Defendant improperly reported that its NDCs were Covered Outpatient Drugs eligible for reimbursement, and the State relied upon this representation on a continuing basis when reimbursing for drugs in the Medicaid program. At all times relevant to this action, Defendant was aware of the State of Mississippi's Medicaid drug reimbursement procedures and its use and reliance upon the drug information reported by the Defendant. Each and every time the Defendant caused the State to reimburse for an ineligible drug listed in Exhibit A is a violation of Mississippi law.

Defendant's Marketing of Unapproved Drugs

20. Defendant knowingly, willfully, wantonly, and/or intentionally provided or caused to be provided inaccurate information for its drugs to the CMS and various nationally known drug industry reporting services. Pursuant to its rebate agreement, Defendant was required to reaffirm and update the list of its Covered Outpatient Drugs to CMS on a quarterly basis. Defendant additionally had a duty to inform the State of the eligibility status of its drugs on a continuing basis. Defendant, however, represented that its NDCs were Covered Outpatient Drugs, and thus eligible for Medicaid reimbursement, when in fact they were not.

21. Defendant intentionally reported unapproved drugs, non drug products (products not covered by the FDA), and/or products deemed less than effective by the FDA as Covered Outpatient Drugs. All of these products are ineligible for Medicaid reimbursement.

22. Defendant perpetrated this scheme of reporting false FDA approval information and marketing unapproved and ineligible drugs for the drugs listed in Exhibit A.

23. CMS and the reporting services published the information to various reimbursers, such as the State of Mississippi's Medicaid agency.

24. The false information disseminated by Defendant throughout the healthcare industry was and is used by the State of Mississippi with respect to reimbursement for prescription drugs. At all relevant times to this action, the State's Medicaid agency relied on the representations provided by Defendant to CMS and the healthcare industry in determining whether the drugs were eligible for Medicaid reimbursement.

25. Defendant knew that by submitting false information concerning its drugs, it would cause the State to pay for unapproved and ineligible drugs. Defendant misled the State Medicaid agency into believing the drugs at issue were Covered Outpatient Drugs and therefore reimbursable.

26. Defendant knowingly, willfully, wantonly, and/or intentionally concealed the true status of its respective drugs from the State's Medicaid agency. Defendant knew its drugs were not eligible for Medicaid reimbursement. Defendant also knew that reporting and publishing false information would cause the State to pay for drugs not rightfully reimbursable.

27. Unless governmental or industry surveys, lawsuits, or criminal or regulatory investigations publicly reveal the true nature of a particular drug at issue, the State of

Mississippi's Medicaid agency, like other state Medicaid agencies, is not privy to the true reimbursement eligibility of NDCs. Defendant has concealed the true nature of its drugs' approval statuses from the State for the purpose of avoiding detection of the fraudulent scheme described herein.

28. Defendant fraudulently reported certain prescription drugs as Covered Outpatient Drugs eligible for reimbursement and marketed them to physicians, pharmacists, and others in the healthcare industry as being Covered Outpatient Drugs. For each time period listed for the NDCs in Exhibit A, the Defendant reported that the NDC was an FDA approved drug eligible for reimbursement every quarter during the time period. The Defendant also continuously caused the State to believe its drugs were eligible for reimbursement. As a result of this fraudulent scheme, Defendant has prevented third parties, including the State's Division of Medicaid, from determining that said drugs were not eligible for Medicaid reimbursement.

29. The Defendant's unlawful conduct, as outlined above, conferred a benefit upon the Defendant in the form of increased market share and resulting increased profits. The Defendant has retained and continues to retain the benefits conferred upon it as a result of its unlawful conduct, to the detriment of the State of Mississippi.

30. The unfair, fraudulent, wanton, and deceptive practices engaged in by Defendant in creating and reporting, or causing to be reported, false approval information for its drugs, or otherwise concealing the true nature of its drugs as an inducement to providers to utilize Defendant's drugs, has resulted in the State paying for unapproved drugs, while at the same time enriching Defendant with excessive, unjust, and illegal profits.

Other Lawsuits, Settlements, Government Investigations, and Criminal Proceedings

31. The State's Complaint was not drafted in a vacuum. Many pharmaceutical manufacturers have already been sued for the same or similar Medicaid fraud scheme in a *qui tam* case. *United States ex rel. Conrad v. Abbott Labs. Inc.*, Civil Action No. 02-CV-11738-RWZ (D. Mass., Sept. 26, 2011) (Doc. 260, Tenth Amended Complaint). A number of states have moved to intervene in that action.

32. Published opinions and other public documents generated in the course of this parallel federal litigation reveal that those Defendant fraudulently marketed its drugs as Covered Outpatient Drugs, and thus, eligible for reimbursement. The federal court has previously denied a Motion to Dismiss filed by Healthpoint, LTD in the unapproved drug *qui tam* case. The Department of Justice press release states in part:

> *The government's complaint alleges that Healthpoint knew Xenaderm was unapproved, and knew of or recklessly disregarded the FDA notices concerning trypsin's lack of effectiveness as a debriding agent. According to the complaint, Healthpoint nonetheless falsely represented to the United States that the drug was eligible for Medicaid and Medicare reimbursement. As a result of Healthpoint's false statements, the United States alleges that Healthpoint caused Medicaid and Medicare to pay tens of millions of dollars for an unapproved drug that was ineligible for reimbursement.*
>
> *"The problem with unapproved drugs is that FDA does not know what is in them, whether they are effective or safe, or how they are made," said FDA Commissioner Margaret M Hamburg, MD. "FDA routinely works together with companies to ensure that safe, effective products are available for Americans. As this case demonstrates, when companies place consumers at risk by selling drugs without required FDA approval, they should not profit from that."*

33. With respect to Healthpoint's Motion to Dismiss, the Court held in part:

> *Here, the government alleges that between 2002 and 2006, Healthpoint, on quarterly statements submitted to the Centers for Medicare and Medicaid Services, recklessly coded Xenederm as eligible for reimbursement - when in fact it was not. And it charges that these submissions were "material to*

> *the claims for government reimbursement for Xenederm." Docket # 217 at 70-71. These allegations adequately provide "the who, what, where, and when of the allegedly false claim and satisfy the flexible" Gagne formulation for pleading sufficiency in the FCA context. Duxbury, 579 F.3d at 29.*

34. The State of Mississippi believes that the above-described fraudulent scheme was utilized by the Defendant in this case.

35. Federal criminal actions have been instituted against manufacturers related to unapproved drugs. As part of the criminal proceedings, various drug companies pleaded guilty to and/or agreed to settle criminal charges for having engaged in unlawful marketing with respect to certain of their prescription drugs reimbursed under federal programs, such as Medicare, and state programs, such as Medicaid. These manufacturers paid fines and civil penalties for this admittedly wrongful conduct.

36. The guilty pleas, settlements, and admissions of fault by these manufacturers demonstrate that this conduct is a far-reaching and widespread scheme in the pharmaceutical industry to unlawfully market unapproved drugs to increase profits for their products. For example, in 2010, Forest Pharmaceuticals, Inc. agreed to pay more than $313 million to settle criminal and civil liability arising from Forest's marketing of unapproved drugs. Forest pleaded guilty to distributing an unapproved drug into interstate commerce. The DOJ press release stated:

> *Today, U.S. District Judge Nancy Gertner, sentenced drug manufacturer FOREST PHARMACEUTICALS, INC. to pay a criminal fine of $150 million and forfeit assets of $14 million following the company's guilty plea last year.*
>
> *"Today's sentencing of Forest Pharmaceuticals is a victory for the*

> *system designed to protect patients from potentially harmful prescription drugs," said Daniel R. Levinson, Inspector General of the Department of Health & Human Services. "Attempts to circumvent that system by selling misbranded and unapproved drugs simply will not be tolerated."*

37. Government investigations by the FDA also revealed fraudulent drug approval schemes by various manufacturers. For example, the FDA has publicly stated that unapproved drugs pose significant harm to the public, including Mississippi Medicaid recipients. In fact, the FDA has acknowledged that there are unapproved drugs being marketed without FDA approval:

> *The Agency has serious concerns that drugs marketed without required FDA approval may not meet modern standards for safety, effectiveness, quality, and labeling. Physicians and other healthcare practitioners, along with consumers, cannot assume that all marketed drugs have been found by the FDA to be safe and effective. For a variety of historical reasons, some drugs, mostly older products, continue to be marketed illegally in the U.S. without required FDA approval. The manufacturers of unapproved drug products have not received FDA approval and do not conform to a monograph for making over-the-counter (OTC) drugs. The lack of evidence demonstrating that these unapproved drugs are safe and effective is a significant public health concern.*

www.fda.gov

38. Defendant's scheme of tricking the system into believing certain drugs have FDA approval has been long lasting and well hidden from the rest of the healthcare industry. As noted by the FDA:

> *Many healthcare providers are unaware of the unapproved status of drugs and have continued to unknowingly prescribe them because the drugs' labels do not disclose that they lack FDA approval. In addition, since many unapproved drugs are marketed without brand names and have been available for many years, it is often assumed that these unapproved drugs are generic drugs. This is not correct.*

> *Unapproved drug products have not been evaluated and approved by FDA. Unapproved drugs are* not *generic medications, and neither their safety nor their efficacy can be assured.*

www.fda.gov

39. Some of the conduct described herein goes back over several years prior to the filing of this Complaint. As explained above, however, the nature and extent of the fraudulent scheme were not known to the State because information concerning the true nature that should have been submitted to the reporting services was concealed and not publicly available. It has only been through regulatory investigations, criminal actions, and civil actions that the impact of the fraudulent scheme on the State has been indicated or revealed. Even today, the true nature of many of the drugs in question for the entire time period at issue is not known by the State.

40. For purposes of specificity of pleading (particularly with respect to the fraud allegations), suffice it to say that Defendant is and has been on notice of the claims asserted herein as a result of the many investigations and actions undertaken around the country on this same subject. Indeed, Defendant should know, without further allegation from the State, exactly which unapproved drugs are being marketed and being reimbursed by Mississippi Medicaid.

V. DAMAGES

A. Damages to State

41. The foreseeable and intended consequences of the Defendant's conduct has been to bilk the State of Mississippi and its taxpayers out of Medicaid dollars through its fraudulent

scheme. Liquidated damages to the State are estimated at $1,518,293.04.

42. In particular, as a direct result of Defendant's illegal scheme, the State of Mississippi has made excess Medicaid payments for the unapproved drugs.

43. The State seeks to recover these costs, actual damages and/or restitution as well as injunctive relief to halt the Defendant's pilfering of this vital State program and an accounting of all profits or gains derived in whole or in part by the Defendant through its fraudulent, unfair, and/or deceptive acts or practices complained of herein.

B. Damages to Taxpayers

44. The foreseeable and intended consequences of the Defendant's conduct has also resulted in increased strain on the wallets and personal budgets of Mississippi's taxpayers whose income taxes go to fund Mississippi's Medicaid program. As noted, if the Defendant had properly reported these drugs as not Medicaid-reimbursable, the State would have never paid for the drugs nor paid disbursement fees to pharmacists.

C. Damages to Beneficiaries

45. The foreseeable and intended consequences of the Defendant's conduct have also resulted in injuries to the poor and disabled beneficiaries of the Mississippi Medicaid program. The direct result of the Defendant's actions has been the reduction of pharmaceutical benefits.

VI. CAUSES OF ACTION

a. Violations of Mississippi Medicaid Fraud Control Act

46. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

47. Defendant's reporting of its products as Covered Outpatient Drugs eligible for

reimbursement for purposes of obtaining Medicaid reimbursements for providers in return for an increase in market share, constitutes a violation of Mississippi's Medicaid Fraud Control Act ("MFCA"), Miss. Code Ann. § 43-13-201, *et seq.*

48. By knowingly and willfully providing and/or publishing NDCs and falsely representing prescription drugs as being Covered Outpatient Drugs with knowledge that providers' claims for reimbursement from the State's Medicaid program are based upon those misrepresentations, all in order to increase its market share, Defendant unlawfully submitted and/or caused false claims to be submitted to the Mississippi Medicaid program in violation of Miss. Code Ann. § 43-13-213.

49. Defendant further violated the MFCA by fraudulently concealing the falsity and inaccuracy of its unapproved drugs from the State and its Medicaid agency.

50. As the actual and proximate result of Defendant's violations of the MFCA, the State has suffered actual damages by paying for drugs that were not eligible for Medicaid reimbursement.

51. Defendant is directly liable to the State for damages including civil penalties equal to the full amount received by the Defendant, plus an additional civil penalty equal to triple the full amount received by the Defendant. Miss. Code Ann. § 43-13-225.

b. Violations of Mississippi Consumer Protection Act

52. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

53. Defendant's reporting of FDA approval for its drugs, and reporting its drugs as Covered Outpatient Drugs eligible for reimbursement to consumers within the stream of

commerce, knowing that the State would use them to authorize Medicaid reimbursements, constitutes unfair and deceptive practices in violation of the Mississippi Consumer Protection Act ("MCPA"), Miss. Code Ann. § 75-24-1, *et seq*.

54. In the course of trade or commerce, Defendant intentionally, fraudulently, and deceitfully reported or caused to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for prescription drugs, resulting in larger market share and/or profits for Defendant, in violation of Miss. Code Ann. § 75-24-5.

55. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant has used unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce in violation of § 75-24-5(1).

56. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, the Defendant violated § 75-24-5(2)(b) by misrepresenting the source, sponsorship, approval or certification of the goods.

57. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in

Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(c) by misrepresenting the affiliation, connection, or association with, or certification by another of the goods.

58. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(e) by representing that goods have characteristics or benefits or quantities that they do not have or that the Defendant has approval for its drugs that it does not have.

59. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(g) by representing that the goods are of a particular standard, quality, or grade.

60. Defendant knew or should have known that the State of Mississippi relied upon its representations pertaining to Covered Outpatient Drugs in making reimbursement payments for prescription drugs. Therefore, there existed at all relevant times, a duty owed to the State and its Medicaid agency, by Defendant, not to mislead the State when providing and/or reporting NDCs and the approval status of its drugs and to inform the State of the true eligibility status of its drugs.

61. As the actual and proximate result of Defendant's unfair and deceptive practices,

the State has suffered actual damages by paying grossly excessive amounts for unapproved drugs.

62. This action is brought pursuant to Miss. Code Ann. § 75-24-1 *et. seq.*, including but not limited to: § 75-24-5, § 75-24-9, § 75-24-11, § 75-24-15, for injunctive relief, compensatory damages, restitution, and any other orders or judgments as may be necessary to restore to the State any monies or property acquired by means of any unfair or deceptive trade practices in or affecting the stream of commerce.

63. The Attorney General has statutory authority to bring an action in the name of the state against any person that he has reason to believe "is using, has used, or is about to use" any method constituting a violation of the MCPA. As alleged herein, the Defendant's actions constitute unfair and deceptive practices in violation of the MCPA entitling the Attorney General to seek a permanent injunction. Miss. Code Ann. § 75-24-9.

64. Furthermore, because the Defendant willfully used or are using unfair and/or deceptive trade acts or practices, it is liable for civil penalties not to exceed Ten Thousand Dollars ($10,000.00) per violation. Miss Code Ann. § 75-24-19. Each and every time the Defendant caused the State to reimburse for an ineligible drug listed in Exhibit A is a violation of the MCPA.

c. Fraud

65. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

66. By knowingly and willfully providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of

Mississippi, when in fact the drugs were not eligible for reimbursement, Defendant engaged and continues to engage in repeated fraudulent acts and practices, resulting in larger market share and/or profits for the Defendant, thus committing fraud against the State of Mississippi.

67. Knowing that the State of Mississippi relies upon its reported NDCs and FDA approval information in making reimbursement payments for only approved and eligible drugs, there existed at all relevant times a duty owed to the State and its Medicaid agency, by Defendant, not to mislead the State when providing and/or reporting NDCs and eligibility statuses of drugs and to inform the State of the true eligibility status of its drugs.

68. Defendant knowingly and intentionally made or caused to be made false and misleading statements and representations regarding prescription drug approval in reporting of NDCs as Covered Outpatient Drugs eligible for reimbursement, on a periodic and continuing basis, for publication and dissemination to the State of Mississippi and its Medicaid agency with the intent to increase its market share and/or profits.

69. Defendant made these false representations that its prescription drugs were Covered Outpatient Drugs, knowing they were false and/or with reckless disregard of its truth.

70. Defendant knew the false representations of the unapproved prescription drug eligibility made to the State and its Medicaid agency were to be used as the basis for Medicaid reimbursements and were therefore material.

71. Defendant fraudulently concealed the falsity and inaccuracy of the unapproved and ineligible statuses from the State and its Medicaid agency.

72. Defendant misrepresented the drug eligibility with the intent to induce the State of Mississippi and its Medicaid agency to rely on the fraudulent reimbursement eligibility of NDCs

and pay Medicaid reimbursements for ineligible products, resulting in larger market share and/or profits for the Defendant.

73. The State of Mississippi and its Medicaid agency did not know of the fraudulent eligibility representations for these drugs and had a right to rely on the drug eligibility representations made by Defendant.

74. The State of Mississippi and its Medicaid agency reasonably relied upon the Defendant's report of Covered Outpatient Drugs and eligibility information in order to reimburse providers.

75. As an actual and proximate result of Defendant's fraudulent conduct, and the State of Mississippi's reasonable reliance thereon, the State has paid too much in connection with purchases or reimbursements of purchases of Defendant's unapproved and ineligible drugs, resulting in larger market share and/or profits for the Defendant.

76. Defendant's misrepresentations are continuing, as it regularly and periodically continues to issue, or causes to issue, false eligibility information and false FDA approval information for publication.

77. The State and its Medicaid agency are entitled to judgment against Defendant for the pecuniary loss suffered as a direct and proximate result of the Defendant's fraudulent conduct.

d. Negligent Misrepresentation

78. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

79. By providing, publishing, and/or causing to be published NDCs as Covered

Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement, resulting in larger market share and/or profits for the Defendant, Defendant made and continues to make negligent misrepresentations to the State of Mississippi.

80. There existed at all relevant times, legal duties owed to the State by Defendant to provide accurate information to the State when providing and/or reporting the eligibility of its prescription drugs.

81. Defendant breached its duties to provide accurate information to the State by affirmatively providing false and misleading statements regarding the unapproved nature and reimbursement eligibility of its drugs and failing to inform the State when it unknowingly reimbursed for an ineligible drug.

82. The State of Mississippi and its Medicaid agency did not know of the ineligibility of the drugs and had a right to rely on the representations made by Defendant.

83. The State of Mississippi and its Medicaid agency reasonably relied upon the Defendant's false report of Covered Outpatient Drugs and eligibility information in order to reimburse providers.

84. As an actual and proximate result of Defendant's misrepresentations, and the State of Mississippi's reasonable reliance thereof, the State has been damaged by paying for unapproved, ineligible drugs, resulting in larger market share and/or profits for the Defendant.

85. The State and its Medicaid agency are entitled to judgment against Defendant for restitution and civil penalties for the losses incurred by the State of Mississippi, and its citizens, as a direct and proximate result of Defendant's misrepresentations.

e. Unjust Enrichment

86. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

87. By knowingly providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement, for purposes of gaining an economic advantage through an enlarged market share, Defendant has been unjustly enriched.

88. Defendant's unlawful conduct, as outlined above, conferred a benefit upon Defendant in the form of increased market share and resulting increased profits.

89. Defendant has retained and continues to retain the benefits conferred upon it as a result of its unlawful conduct, to the detriment of the State of Mississippi.

90. Defendant's retention of such benefits is unjust, as they were obtained by fraudulently providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs for unapproved drugs and drugs not eligible for reimbursement to the State with the knowledge that the State would rely on such representations to its detriment.

91. As a result of these false and misleading statements and representations, the State has paid for drugs which would not otherwise be reimbursable.

92. Defendant knew it was not entitled to the profits that resulted from the sales obtained through the use of marketing unapproved drugs. The Defendant should be required to account for and make restitution to the State of all such amounts obtained through the use of such misrepresentations.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, the State of Mississippi, by and through Jim Hood, its duly elected Attorney General, requests that this Court grant the following relief against the Defendant as follows:

(1) an order enjoining the Defendant from continuing the fraudulent, deceptive and/or unfair acts or practices complained of herein, and requiring correcting measures;

(2) an award of compensatory damages to the State in such amount as is proved at trial;

(3) an award of all civil penalties provided for by statute;

(4) an award of punitive damages;

(5) an accounting of all profits or gains derived in whole or in part by the Defendant through its fraudulent, unfair and/or deceptive acts or practices complained of herein;

(6) a constructive trust of the moneys illegally and impermissibly obtained from the Defendant's scheme;

(7) an order imposing a constructive trust on and/or requiring disgorgement by the Defendant of all profits and gains earned in whole or in part through the fraudulent, unfair and/or deceptive acts or practices complained of herein;

(8) an award of costs and prejudgment and post judgment interest;

(9) an award of all attorneys' fees and costs; and

(10) such other and further relief as the Court may deem appropriate and just.

RESPECTFULLY SUBMITTED, this the 10th day of March, 2017.

STATE OF MISSISSIPPI
JIM HOOD, ATTORNEY GENERAL

By: ______________________________
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Jacqueline H. Ray (MBN 100169)
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Tel: (601) 359-3680
Fax: (601) 359-2003
gnevi@ago.state.ms.us
jacra@ago.state.ms.us

OF COUNSEL:

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Facsimile: (601) 852-1714

William Tucker May (MBN 1962)
BARRY, THAGGARD,
MAY & BAILEY LLP
505 Constitution Avenue
Meridian, MS 39301
Telephone: (601) 693-2393
Facsimile: (601) 482-7855

EXHIBIT A

Manufacturer	NDC	Min Date of Service	Max Date of Service
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376003201	2/17/2005	11/15/2007
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376003301	3/5/2005	12/22/2005
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376043740	2/13/2008	11/3/2009
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376050101	7/9/2002	2/3/2003
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376050105	4/19/2002	6/28/2003
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376053001	2/28/2005	11/5/2009
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376053201	11/21/2003	12/9/2008
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054301	9/1/2005	5/5/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054331	7/27/2005	5/3/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054401	10/17/2005	5/7/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054431	7/7/2005	11/13/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054601	2/12/2007	2/22/2010
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376071416	2/21/2005	4/21/2012
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376071616	9/28/2005	9/28/2005
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072116	10/17/2003	4/19/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072830	5/31/2006	12/1/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072916	7/25/2006	10/5/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072940	4/20/2006	7/13/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376073716	7/15/2008	1/7/2011

COVER SHEET
Civil Case Filing Form
(To be completed by Attorney/Party Prior to Filing of Pleading)

Mississippi Supreme Court Form AOC/01
Administrative Office of Courts (Rev 2016)

Court Identification Docket #: 25 | 1 | CH — County # / Judicial District / Court ID (CH, CI, CO)
Case Year: 2017
Docket Number: 309
Local Docket ID: G
Month / Date / Year: 03 10 17
This area to be completed by clerk
Case Number if filed prior to 1/1/94

In the CHANCERY Court of HINDS County — FIRST Judicial District

Origin of Suit (Place an "X" in one box only)
- [X] Initial Filing
- [ ] Remanded
- [ ] Reinstated
- [ ] Reopened
- [ ] Foreign Judgment Enrolled
- [ ] Joining Suit/Action
- [ ] Transfer from Other court
- [ ] Appeal
- [ ] Other

Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form

Individual ______ Last Name ______ First Name ______ Maiden Name, if applicable ______ M.I. ______ Jr/Sr/III/IV

___ Check (x) if Individual Plainitiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:
Estate of ______
___ Check (x) if Individual Planitiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity
D/B/A or Agency ______

Business The State of Mississippi ex rel. Jim Hood, Attorney General for the State of Mississippi
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated
___ Check (x) if Business Planitiff is filing suit in the name of an entity other than the above, and enter below:
D/B/A ______

Address of Plaintiff 550 High Street, Jackson, MS 39201
Attorney (Name & Address) George W. Neville, PO Box 220, Jackson, MS 39205 MS Bar No. 3822
___ Check (x) if Individual Filing Initial Pleading is NOT an attorney
Signature of Individual Filing: [signature]

Defendant - Name of Defendant - Enter Additional Defendants on Separate Form

Individual ______ Last Name ______ First Name ______ Maiden Name, if applicable ______ M.I. ______ Jr/Sr/III/IV

___ Check (x) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:
Estate of ______
___ Check (x) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:
D/B/A or Agency ______

Business Endo Pharmaceuticals, Inc.
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated
___ Check (x) if Business Defendant is acting in the name of an entity other than the above, and enter below:
D/B/A ______

Attorney (Name & Address) - If Known ______ MS Bar No. ______

___ **Check (x) if child support is contemplated as an issue in this suit.***
*If checked, please submit completed Child Support Information Sheet with this Cover Sheet

Nature of Suit (Place an "X" in one box only)

Domestic Relations
- [ ] Child Custody/Visitation
- [ ] Child Support
- [ ] Contempt
- [ ] Divorce:Fault
- [ ] Divorce: Irreconcilable Diff.
- [ ] Domestic Abuse
- [ ] Emancipation
- [ ] Modification
- [ ] Paternity
- [ ] Property Division
- [ ] Separate Maintenance
- [ ] Term. of Parental Rights-Chancery
- [ ] UIFSA (eff 7/1/97; formerly URESA)
- [ ] Other ______

Appeals
- [ ] Administrative Agency
- [ ] County Court
- [ ] Hardship Petition (Driver License)
- [ ] Justice Court
- [ ] MS Dept Employment Security
- [ ] Municipal Court
- [ ] Other ______

Business/Commercial
- [ ] Accounting (Business)
- [ ] Business Dissolution
- [ ] Debt Collection
- [ ] Employment
- [ ] Foreign Judgment
- [ ] Garnishment
- [ ] Replevin
- [ ] Other ______

Probate
- [ ] Accounting (Probate)
- [ ] Birth Certificate Correction
- [ ] Mental Health Commitment
- [ ] Conservatorship
- [ ] Guardianship
- [ ] Heirship
- [ ] Intestate Estate
- [ ] Minor's Settlement
- [ ] Muniment of Title
- [ ] Name Change
- [ ] Testate Estate
- [ ] Will Contest
- [ ] Alcohol/Drug Commitment (Involuntary)

- [ ] Alcohol/Drug Commitment (Voluntary)
- [ ] Other

Children/Minors - Non-Domestic
- [ ] Adoption - Contested
- [ ] Adoption - Uncontested
- [ ] Consent to Abortion
- [ ] Minor Removal of Minority
- [ ] Other ______

Civil Rights
- [ ] Elections
- [ ] Expungement
- [ ] Habeas Corpus
- [ ] Post Conviction Relief/Prisoner
- [ ] Other ______

Contract
- [ ] Breach of Contract
- [ ] Installment Contract
- [ ] Insurance
- [ ] Specific Performance
- [ ] Other ______

Statutes/Rules
- [ ] Bond Validation
- [ ] Civil Forfeiture
- [ ] Declaratory Judgment
- [ ] Injunction or Restraining Order
- [ ] Other ______

Real Property
- [ ] Adverse Possession
- [ ] Ejectment
- [ ] Eminent Domain
- [ ] Eviction
- [ ] Judicial Foreclosure
- [ ] Lien Assertion
- [ ] Partition
- [ ] Tax Sale: Confirm/Cancel
- [ ] Title Boundary or Easement
- [ ] Other ______

Torts
- [ ] Bad Faith
- [X] Fraud
- [ ] Intentional Tort
- [ ] Loss of Consortium
- [ ] Malpractice - Legal
- [ ] Malpractice - Medical
- [ ] Mass Tort
- [ ] Negligence - General
- [ ] Negligence - Motor Vehicle
- [ ] Premises Liability
- [ ] Product Liability
- [ ] Subrogation
- [ ] Wrongful Death
- [ ] Other ______

**IN THE CHANCERY COURT FOR THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD,
ATTORNEY GENERAL for the STATE of MISSISSIPPI

PLAINTIFF

v. **Civil Action No** G-2017-309 T/1

ENDO PHARMACEUTICALS INC.

DEFENDANT

SUMMONS

THE STATE OF MISSISSIPPI
COUNTY OF HINDS

To: ENDO PHARMACEUTICALS INC.
Through its agent for service:
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to Michael S. Smith, II, an attorney for the Plaintiff, at MUSGROVE/SMITH LAW, the mailing address of which is Post Office Box 4670, Jackson, Mississippi 39296, and the street address of which is 599 Highland Colony Pkwy, Suite 110, Ridgeland, MS 39157. Your response must be mailed or delivered within 30 days from the date of delivery of this Summons and Complaint or a judgment by default will be entered against you for the things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and the seal of the Court, this 10th day of March, 2017.

CHANCERY COURT HINDS COUNTY, MISS.

CLERK OF HINDS COUNTY, MISSISSIPPI

By: T. Simmons

CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

The State of Mississippi *ex rel.* Jim Hood, Attorney General for the State of Mississippi, Plaintiff, v. Endo Pharmaceuticals, Inc., Defendant.	Civil Action No. 17-cv-309

Notice of Entry of Appearance

Michael S. Smith, II, of the law firm of Musgrove/Smith Law, 599 Highland Colony Parkway, Suite 110, Ridgeland, Mississippi 39157, enters his appearance in this matter as counsel of record for Plaintiff The State of Mississippi.

The State of Mississippi requests that Michael S. Smith, II, be provided copies of all notices given and papers served in this case, including motions, applications, petitions, complaints, and/or other pleadings, orders, judgments reports, and any other documents filed or served in this proceeding.

[SPACE INTENTIONALLY LEFT BLANK]

DATED this 13th day of March, 2017.

Respectfully Submitted,

STATE OF MISSISSIPPI
JIM HOOD, ATTORNEY GENERAL

BY: s/ *Michael S. Smith, II*

Ronnie Musgrove (MSB# 3698)
Michael S. Smith, II (MSB# 103575)
MUSGROVE/SMITH LAW
599 Highland Colony Parkway, Suite 110
Ridgeland, Mississippi 39157
(t) 601.852.1696 | (f) 601.852.1714
musgrove@musgrovesmith.com
michael@musgrovesmith.com

Attorneys for The State of Mississippi

Certificate of Service

I, Michael S. Smith, II, certify that on this 13th day of March, 2017, a true and correct copy of the previous document was electronically filed with the Clerk of Court using the MEC System which sent notification of the filing to all counsel of record.

s/ *Michael S. Smith, II*
Michael S. Smith, II

IN THE CHANCERY COURT FOR THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD,
ATTORNEY GENERAL for the STATE of MISSISSIPPI

PLAINTIFF

v. **Civil Action No 17-309**

ENDO PHARMACEUTICALS INC.

DEFENDANT

PROOF OF SERVICE—SUMMONS

Name of Person or Entity Served: ENDO PHARMACEUTICALS INC.

I, Alison D. Hawthorne, served the Summons and Complaint upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

☐ FIRST CLASS MAIL AND ACKNOWLEDGMENT SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender. (*Attach completed acknowledgement of receipt pursuant to M.R.C.P. Form 1B*).

☐ PERSONAL SERVICE. I personally delivered copies to ____________________ on the _______ day of __________________, 2017, where I found the person in ________________ County in the State of Mississippi.

☐ RESIDENCE SERVICE. After exercising reasonable diligence, I was unable to deliver copies to said person within ______________ County, Mississippi. I served the summons and complaint on the __________ day of _______________, 2017, at the usual place of abode of the person by leaving a true copy of the summons and complaint with _______________________, who is the ____________________ (here insert wife, husband, son, daughter, or other person as the case may be), a member of the family of the person served above the age of 16 and willing to receive the summons and complaint, and thereafter on the ________ day of _______________, 2017, I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place of abode where the copies were left.

☑ CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (*Attach signed return receipt or the return envelope marked "Refused."*)

At the time of service, I was at least 18 years of age and not a party to this action.

Process Server's Name: Alison D. Hawthorne
Process Server's Address: 272 Commerce Street, Montgomery, Alabama 36104

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Personally appeared before me the undersigned authority in and for the state and county aforesaid, the within named Alison D. Hawthorne who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Proof of Service—Summons" are true and correct as therein stated.

[signature]
Process Server Signature

Sworn to and subscribed before me this the 27 day of March, 2017.

Jessica D. Stapp
Notary Public

My Commission Expires:

November 2, 2019

Attachment A

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ENDO PHARMACEUTICALS INC.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

9590 9402 2179 6193 9275 76

2. Article Number *(Transfer from service label)*

7013 2630 0000 0295 1920

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Amy McLaren
☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED MAR 2 3 2017

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ail
- ail Restricted Delivery
-)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS Tracking® Results

FAQs > (http://faq.usps.com/?articleId=220900)

Track Another Package +

Remove ✕

Tracking Number: 70132630000002951920

Delivered

Updated Delivery Day: Thursday, March 23, 2017 ⓘ

Product & Tracking Information

See Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
March 23, 2017, 6:29 am	**Delivered**	**WILMINGTON, DE 19801**

Your item was delivered at 6:29 am on March 23, 2017 in WILMINGTON, DE 19801.

March 22, 2017, 11:54 am	Notice Left	WILMINGTON, DE 19801
March 22, 2017, 11:03 am	Available for Pickup	WILMINGTON, DE 19801
March 22, 2017, 10:15 am	Arrived at Unit	WILMINGTON, DE 19801

See More ∨

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI *ex rel.* JIM HOOD, ATTORNEY GENERAL for the STATE OF MISSISSIPPI — **PLAINTIFF**

v — **CAUSE NO.: 25CH1:17cv309**

ENDO PHARMACEUTICALS INC. — **DEFENDANT**

NOTICE OF FILING OF NOTICE OF REMOVAL

Defendant Endo Pharmaceuticals Inc. ("Endo") advises this Court that today they filed a Notice of Removal of the above-captioned action in the United States District Court for the Southern District of Mississippi, Northern Division. A copy of the Notice of Removal, exclusive of exhibits, is attached to this Notice as Exhibit "A."

In accordance with the provisions of 28 U.S.C. § 1446, this Court shall proceed no further unless the case is remanded by order of the United States District Court for the Southern District of Mississippi.

This the 17th day of April, 2017.

Respectfully submitted,

ENDO PHARMACEUTICALS INC.

By Its Attorneys,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

By: */s/ David F. Maron*
DAVID F. MARON

OF COUNSEL:

David F. Maron (MSB #10170)
Samuel D. Gregory (MB No. 104563)
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
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PHYSICAL: One Eastover Center
100 Vision Drive, Suite 400
Jackson, Mississippi 39211-6391
Tel: (601) 351-2400
Fax: (601) 351-2424
dmaron@bakerdonelson.com
sdgregory@bakerdonelson.com

CERTIFICATE OF SERVICE

I do hereby certify that on this day the foregoing document was filed electronically with the Clerk of the Court using the Court's MEC system, which served a true and correct copy of such filing electronically on the following counsel of record:

George W. Neville
Jacqueline H. Ray
OFFICE OF THE MISSISSIPPI ATTORNEY GENERAL
Post Office Box 220
Jackson, MS 39205

Ronnie Musgrove
Michael S. Smith, II
MUSGROVE/SMITH LAW
599 Highland Colony Parkway, Suite 110
Ridgeland, MS 39157

William T. May
BARRY THAGGARD MAY & BAILEY LLP
505 Constitution Avenue
Meridian, MS 39301

This the 17th day of April, 2017.

/s/David F. Maron
David F. Maron

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD, ATTORNEY GENERAL for the STATE OF MISSISSIPPI,	:	
Plaintiff,	:	
v.	:	C.A. No. ________________
ENDO PHARMACEUTICALS INC.,	:	
Defendant.	:	

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

Endo Pharmaceuticals Inc. ("Endo") by and through its undersigned counsel, hereby provides notice pursuant to 28 U.S.C. § 1446 of the removal of the above-captioned case from the Chancery Court for the First Judicial District of Hinds County, Mississippi, to the Northern Division of the United States District Court for the Southern District of Mississippi. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and the matter is therefore removable pursuant to 28 U.S.C. §§ 1441 and 1446.

The viability of each of the self-styled "state-law" claims asserted by Plaintiff State of Mississippi ("Plaintiff" or the "State") is predicated upon substantial and disputed questions of federal law. According to the State, the gravamen of its Complaint is that Endo "improperly reported that its [products] were Covered Outpatient Drugs eligible for reimbursement, and the State relied upon this representation on a continuing basis when reimbursing for drugs in the Medicaid program." Compl. at ¶ 19 (DKT. #2). As the State acknowledges, the source of Endo's duty to report which of its drug products are "Covered Outpatient Drugs" is the contract between Endo, on the one hand, and the United States Department of Health and Human Services (on behalf of itself and each of the participating State Medicaid agencies), on the other hand. Compl. ¶ 16; 42 U.S.C. § 1396r-8(a), (b); 42 C.F.R. § 447.510. This contract, known as the Medicaid Drug Rebate Agreement ("MDRA"), is governed by federal law. *See* Sample Rebate Agreement at https://www.medicaid.gov/medicaid-chip-program-information/by-topics/prescription-drugs/downloads/samplerebateagreement.pdf ("The rebate agreement shall be construed in accordance with Federal common law and ambiguities shall be interpreted in the manner which best effectuates the statutory scheme."); *see also, Boyle v. United Tech. Corp.*, 487 U.S. 500, 504, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988) ("[O]bligations to and rights of the United States under its contracts are governed exclusively by federal law."); *Massachusetts v. Mylan Laboratories*, 357 F. Supp. 2d 314 (D. Mass. 2005) ("A contract breach of a rebate agreement under the federal Medicaid program must be construed under federal common law in the manner that best effectuates the statutory scheme."). The term "Covered Outpatient Drug" as used in the MDRA is defined by federal law. *See* 42 U.S.C. § 1396r–8(k)(2); 42 CFR § 447.502

Thus, according to the State:

> In order for its drugs to be eligible for reimbursement, the Defendant must enter into a Medicaid Drug Rebate Agreement, which requires Defendant to expressly represent which drugs are eligible for Medicaid reimbursement and submit a list of all Covered Outpatient Drugs, identified by NDC number, quarterly. Covered Outpatient Drugs are generally defined as those that may only be dispensed by prescription and are approved for safety and effectiveness as a prescription drug by the FDA. Thus, unapproved drugs, including those deemed less than effective by the FDA, and non-drug products, such as vitamins, are not Covered Outpatient Drugs eligible for reimbursement.

Compl. at ¶ 16.[1] Endo disputes that the State can re-characterize what is in reality a claim for breach of a federal contract as claims for violations of state law. Endo further disputes the State's interpretation of the applicable federal statute defining the term "Covered Outpatient Drug." But for present purposes, these disputes are irrelevant. By Plaintiff's own admission, this Court must first determine as a matter of federal law whether each of the drugs at issue is a "Covered Outpatient Drug" and, if not, whether as a matter of *federal law* any such drug is otherwise reimbursable. Only after making these determinations of *federal* law will the Court then be able to determine whether or not Endo made a misrepresentation to the State of Mississippi in determining whether Endo is liable under one or more of the state-law claims alleged in the Complaint.

Absent the alleged violations of federal law, there is no basis for *any* of the Mississippi state-law claims Plaintiff alleges.[2] To prevail, Plaintiff must prove that each product at issue is not reimbursable under federal law. Plaintiff's claims, therefore, require a complex analysis and application of, among others things, the Federal Drug & Cosmetic Act ("FDCA"), the Social Security Act, and the associated regulations of no less than two federal agencies, CMS and the FDA, as well as the application of federal common law in interpreting the MDRA.

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[1] The rights and obligations imposed upon manufacturers whose products are eligible for reimbursement by Medicaid are set forth at Section 4401 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101508, and Section 1927 of the Social Security Act, 42 U.S.C. §1396 et seq. The term "Covered Outpatient Drug" is a statutorily defined term in federal law at Section 1927(k)(2), (k)(3) and (k)(4) of the Social Security Act. Moreover, the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 9 et seq. governs the approval status of prescription drugs.

[2] Each of the State's numbered Causes of Action turns on this disputed question of federal law. *See* **a.** Violations of Mississippi Medicaid Fraud Control Act, Miss Code Ann. § 43-13-201 *et seq.* ("Defendant's reporting of its products as Covered Outpatient Drugs eligible for reimbursement for purposes of obtaining Medicaid reimbursements for providers in return for an increase in market share, constitutes a violation of" the MFCA)(Compl. ¶¶ 46-51); **b.** Violations of Mississippi Consumer Protection Act ("Defendant's reporting of FDA approval for its drugs, and reporting its drugs as Covered Outpatient Drugs eligible for reimbursement to consumers within the stream of commerce, knowing that the State would use them to authorize Medicaid reimbursements, constitutes unfair and deceptive practices in violation of" the MCPA)(Compl. ¶¶ 52-64); **c.** Fraud ("By knowingly and willfully providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement," the Defendant committed fraud against the State of Mississippi) (Compl. ¶¶ 65-77); **d.** Negligent Misrepresentation ("By providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement"

Federal question jurisdiction over state-law causes of action exists when the plaintiff's right to relief depends upon a contested and substantial issue of federal law. *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). Here, Plaintiff's *entire case* rests upon the allegation that Endo misrepresented to Mississippi that its drug products were eligible for Medicaid reimbursement pursuant to federal law. Where, as here, the "claims require interpretation of contracts to which the Federal Department of Health and Human Services is a party, and the pharmaceutical companies' [] obligations under these contracts are governed by federal common law," this Court has jurisdiction over those claims. *Montana v. Abbott Labs.*, 266 F. Supp. 2d 250, 259 (D. Mass. 2003). The Complaint thus necessarily raises issues of federal law that are both substantial and disputed, giving this Court subject matter jurisdiction under 28 U.S.C. § 1331.

Ultimately, removal of this case is timely and proper. In accordance with 28 U.S.C. § 1446(a), Endo further states as follows:

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the Defendant made negligent misrepresentations to the State of Mississippi) (Compl. ¶¶ 78-85); and **e.** Unjust Enrichment ("By knowingly providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement, for purposes of gaining an economic advantage through an enlarged market share, Defendant has been unjustly enriched.")(Compl. ¶¶ 86-92).

PROCEDURAL BACKGROUND

1. On March 10, 2017, the Attorney General for Mississippi, on behalf of the State, brought this suit against Endo in the Chancery Court for the First Judicial District of Hinds County, Mississippi.

2. This action involves several products alleged to have been manufactured, marketed or sold by Endo.

3. Plaintiff served Endo with its Complaint on March 23, 2017.

4. Endo has filed this Notice of Removal within 30 days of service of the Complaint, and therefore the Notice is timely. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999).

5. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served on or by Endo are attached hereto as Exhibit A.

6. Venue is proper because the court in which Plaintiff filed this action, the Chancery Court for the First Judicial District of Hinds County, sits within the Northern Division of the U.S. District Court for the Southern District of Mississippi. *See* 28 U.S.C. §§ 104(b), 1441(a).

7. Pursuant to 28 U.S.C. § 1446(d), Endo is providing written notice of the filing of this Notice of Removal to Plaintiff and will file a written notice of removal with the Clerk of the Chancery Court for the First Judicial District of Hinds County, in the form of notice attached as Exhibit B.

JURISDICTION

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because Plaintiff's claims necessarily raise substantial and disputed federal questions "arising under" the

laws of the United States. Federal question jurisdiction exists where "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27–28 (1983). Here, Plaintiff's claims necessarily rely on Endo's alleged knowing or negligent misrepresentation, made in connection with its obligations under a federal statute, that each of the products at issue qualifies as a Covered Outpatient Drug or is otherwise eligible for Medicaid reimbursement under federal law. Plaintiff's claims are therefore premised on a specific interpretation of the MDRA, the FDCA and the Social Security Act, as well as the regulations promulgated and enforced by CMS and the FDA. The claims therefore arise under the laws of the United States pursuant to 28 U.S.C. § 1331.

9. In its Complaint, Plaintiff asserts five causes of action against Endo: (i) violation of the Mississippi Medicaid Fraud Control Act; (ii) violation of the Mississippi Consumer Protection Act; (iii) fraud; (iv) negligent misrepresentation; and (v) unjust enrichment. *See* Compl. ¶¶ 46-92. Although Plaintiff insists that it "makes no claim that would give rise to federal jurisdiction," (Compl. ¶ 11), Plaintiff cannot avoid federal jurisdiction by merely styling its claims as purportedly based on Mississippi law. As the United States Court of Appeals for the Fifth Circuit recently explained, "Supreme Court precedent is clear that a case arises under federal law where 'the vindication of a right under state law necessarily turn[s] on some construction of federal law[.]'" *Bd. of Comm'rs of Se. La. Flood Prot. Auth.-E. v. Tenn. Gas Pipeline Co., L.L.C.*, 850 F.3d 714, 723 (5th Cir. 2017) (quoting *Franchise Tax Bd.*, 463 U.S. at 9). In *Tenn. Gas Pipeline Co.*, the Court of Appeals explained

> The Board is correct that the federal regulatory scheme is only relevant to its claims insofar as the scheme provides the underlying legal basis for causes of action created by

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> state law. But of course Defendants dispute whether the federal scheme provides such basis at all. The dispute between the parties does not just concern whether Defendants breached duties created by federal law; it concerns whether federal law creates such duties. As Defendants point out, the validity of the Board's claims would require that conduct subject to an extensive federal permitting scheme is in fact subject to implicit restraints that are created by state law. The implications for the federal regulatory scheme of the sort of holding that the Board seeks would be significant, and thus the issues are substantial.

Id. at 724. Likewise, the substantial and disputed issues of federal law presented in the Complaint in the instant action call upon the Court to determine what federal law requires of Endo in the first place, and not just whether Endo complied with undisputed federal requirements.

10. In *Grable & Sons Metal Products v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), the United States Supreme Court recognized that it has consistently held "for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues." 545 U.S. at 312. In affirming the removal of the state-law claims in that case, the Court held that "a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify the resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Id.* The Court explained that the test for whether a federal court should hear a case under this doctrine is not whether the federal statute provides a parallel private right of action, but whether the "state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Id.* at 314.

11. Consistent with *Grable*, the Fifth Circuit has held that "federal question jurisdiction exists where (1) resolving a federal issue is necessary to resolution of the state-law

claim; (2) the federal issue is actually disputed; (3) the federal issue is substantial; and (4) federal jurisdiction will not disturb the balance of federal and state judicial responsibilities." *Singh v. Duane Morris LLP*, 538 F.3d 334, 338 (5th Cir. 2008). All four conditions are satisfied here.

12. **First**, resolving federal issues is necessary to the resolution of Plaintiff's claims. As in *Tenn. Gas Pipeline Co.*, "[t]he absence of any state law grounding for the duty that [Plaintiff] would need to establish for the Defendant[] to be liable means that that duty would have to be drawn from federal law." 850 F.3d at 723. Here, as alleged, every one of Plaintiff's claims turns on whether Endo misrepresented to Mississippi that the products at issue were eligible for reimbursement pursuant to federal law, in breach of the MDRA.[3] The resolution of this question requires the interpretation and application of the FDCA, the federal Social Security Act, and the associated federal regulations promulgated by the FDA and CMS, and requires the application of federal common law.

13. **Second**, the core issues of federal law — whether Endo misrepresented that its products were eligible for Medicaid reimbursement — are disputed in this case. Among other things, Endo intends to challenge Plaintiff's allegations of the obligations imposed on manufacturers and the federal reimbursement scheme. *See, e.g.*, Compl. ¶ 16 (alleging that "Covered Outpatient drugs are generally defined as those that may only be dispensed by prescription and are approved for safety and effectiveness as a prescription drug by the FDA"); Compl. ¶ 16 (alleging that "unapproved drugs . . . are not Covered Outpatient Drugs eligible for

[3] Other allegations in the Complaint further demonstrate Plaintiff's reliance on federal law. For example, Plaintiff alleges that "[b]y signing the [Medicaid Drug] [R]ebate [A]greement and participating in the Medicaid program, Defendants agreed to abide by all laws, regulations, and procedures applicable to Medicaid." Compl. ¶ 17. *Federal* law provides the "laws, regulations, and procedures" applicable to Medicaid reimbursement. *See* 21 U.S.C. §§ 301–97; 21 C.F.R. § 200 *et seq.*; 42 U.S.C. § 1396 *et seq.*; 42 C.F.R. § 440.120.

reimbursement"); Compl. ¶ 19 (alleging "Defendant improperly reported that its NDCs [*i.e.*, National Drug Codes] were Covered Outpatient Drugs eligible for reimbursement"). A federal issue is disputed when a defendant "do[es] not concede" that a federal law imposes obligations on the defendant in the manner and to the extent that the plaintiff has alleged. *See Tenn. Gas Pipeline Co.*, 850 F.3d at 723.[4]

14. **Third**, the State's claims involve substantial federal issues. As the Supreme Court has explained, "'[t]he substantiality inquiry under *Grable* looks . . . to the importance of the issue to the federal system as a whole.'" *Id.* (quoting *Gunn v. Minton*, 133 S. Ct. 1059, 1066 (2013)). Here, a product's FDA approval status and its eligibility for Medicaid reimbursement are unquestionably areas of substantial interest to the federal government.

Plaintiff's claims raise substantial issues because "state adjudication would undermine the development of a uniform body of [federal] law," and because these issues have "applications to other federal cases" and "broad[] significance for the federal government." *Tenn. Gas Pipeline Co.*, 850 F.3d at 724 (internal quotations and footnotes omitted; collecting Supreme Court precedent). Indeed, resolving the matters in this case will not simply affect Mississippi's reimbursement practices and Endo's activities with respect to Mississippi. Rather, the issues

[4] In this respect, this case is distinguishable from other cases involving pharmaceutical products where the fact of whether a product has or has not obtained FDA approval (i.e., whether its New Drug Application ("NDA") or Abbreviated New Drug Application ("ANDA") was approved by FDA), or whether a product is approved by the FDA for a particular indication, is not disputed or where the truth or falsity of a defendant's alleged misrepresentation, though set in the context of the Medicaid regime, was not dependent on an interpretation of federal law at all. *See* e.g., *Hood v. AstraZeneca Pharm., LP*, 744 F. Supp. 2d 590 (N.D. Miss. 2010) (declining to find federal question jurisdiction where the question was not what did federal law require of the defendants in their marketing but rather, whether their failure to abide by those requirements violated state law); *Hood v. Ortho-McNeil-Janssen Pharm., Inc.* C.A. No. 1:08CV166-SA-JAD, 2009 WL 561575, at *1 (N.D. Miss. Mar. 4, 2009) (addressing so-called "off-label" marketing); *Hawaii v. Abbott Labs., Inc.*, 469 F. Supp. 2d 842 (D. Haw. 2006) (fraud turns on interpretation of industry term, "average wholesale price," and not requirements of federal law giving rise to state cause of action); *Utah v. Eli Lilly & Co.*, 509 F. Supp. 2d 1016, 1022 (D. Utah 2007) (same).

raised in Plaintiff's case implicate the federal Medicaid system as a whole. *See Montana*, 266 F. Supp. 2d at 259 (the resolution of rights and obligations under the MDRA "could result in substantial changes in the Medicaid reimbursements paid out by the federal government").

15. **Fourth**, allowing for a federal forum in this case will not upset the balance between federal and state judiciaries. A comparison of the relative complexity of the federal and state law that would be applied by the State's claims weighs in favor of a federal forum. To the extent that the State's claims would require a federal court to apply Mississippi law, the questions raised by that process will involve the relatively straightforward application of settled state law. In contrast, a state court addressing the State's claims would be required to interpret and apply a complex federal regulatory scheme.

16. Each and every state-law cause of action Plaintiff alleges *requires* Plaintiff to show that Endo falsely represented that its drug products were reimbursable under *federal* law. In stark contrast to cases where resolution of a state-law claim "d[id] not hinge solely on a federal question," *see, e.g.*, *Utah v. Eli Lilly & Co.*, 509 F. Supp. 2d at 1022, here, resolution of a complex federal issue is a condition precedent to each and every state-law claim Plaintiff alleges. Plaintiff must show that Endo falsely reported drugs as "Covered Outpatient Drugs" within the meaning of *federal* law; without such a showing, each of Plaintiff's state-law cause of action fails on its face.

WHEREFORE, Endo hereby removes this action to the Northern Division of the United States District Court for the Southern District of Mississippi.

This the 17th day of April, 2017.

Respectfully submitted,

BAKER DONELSON BEARMAN

CALDWELL & BERKOWITZ, P.C.

By: ______________________________
DAVID F. MARON

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CERTIFICATE OF SERVICE

I, David F. Maron, one of the attorneys of record for Endo Pharmaceuticals Inc., hereby certify that I have this day filed the foregoing with the Clerk of the Court by hand delivery and served upon the following counsel of record via first-class mail.

George W. Neville
Jacqueline H. Ray
OFFICE OF THE MISSISSIPPI ATTORNEY GENERAL
Post Office Box 220
Jackson, MS 39205

Ronnie Musgrove
Michael S. Smith, II
MUSGROVE/SMITH LAW
599 Highland Colony Parkway, Suite 110
Ridgeland, MS 39157

William T. May
BARRY THAGGARD MAY & BAILEY LLP
505 Constitution Avenue
Meridian, MS 39301

This the 17th day of April, 2017.

David F. Maron

CT Corporation

Service of Process Transmittal
03/23/2017
CT Log Number 530912508

TO: Helen Howlett
Endo Pharmaceuticals Inc.
1400 Atwater Dr
Malvern, PA 19355-8701

RE: **Process Served in Delaware**

FOR: Endo Pharmaceuticals Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	THE STATE OF MISSISSIPPI, etc., Pltf. vs. ENDO PHARMACEUTICALS INC., Dft.
DOCUMENT(S) SERVED:	Summons, Complaint, Exhibit(s)
COURT/AGENCY:	Hinds County Chancery Court - First Judicial District, MS Case # 25CH117CV000309
NATURE OF ACTION:	Medical Injury - Improper Care and Treatment
ON WHOM PROCESS WAS SERVED:	The Corporation Trust Company, Wilmington, DE
DATE AND HOUR OF SERVICE:	By Certified Mail on 03/23/2017 postmarked on 03/14/2017
JURISDICTION SERVED :	Delaware
APPEARANCE OR ANSWER DUE:	Within 30 days from the date of delivery
ATTORNEY(S) / SENDER(S):	George W. Neville Office of the Mississippi Attorney General P.O. Box 220 Jackson, MS 39205 601-359-3680
ACTION ITEMS:	SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0108561489 Image SOP Email Notification, Jobina Jones-McDonnell jones.jobina@endo.com Email Notification, Helen Howlett howlett.helen@endo.com Email Notification, Carolyn Hazard hazard.carrie@endo.com
SIGNED:	The Corporation Trust Company
ADDRESS:	1209 N Orange St Wilmington, DE 19801-1120
TELEPHONE:	302-658-7581

EXHIBIT A

Page 1 of 1 / KH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Attention: Alison Hawthorne/JDS
2017000006617

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ZIP 36104
041M11274311

ENDO PHARMACEUTICALS INC.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

IN THE CHANCERY COURT FOR THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD,
ATTORNEY GENERAL for the STATE of MISSISSIPPI

PLAINTIFF

v. **Civil Action No** G-2017-309 T/1

ENDO PHARMACEUTICALS INC.

DEFENDANT

SUMMONS

THE STATE OF MISSISSIPPI
COUNTY OF HINDS

To: ENDO PHARMACEUTICALS INC.
Through its agent for service:
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to Michael S. Smith, II, an attorney for the Plaintiff, at MUSGROVE/SMITH LAW, the mailing address of which is Post Office Box 4670, Jackson, Mississippi 39296, and the street address of which is 599 Highland Colony Pkwy, Suite 110, Ridgeland, MS 39157. Your response must be mailed or delivered within 30 days from the date of delivery of this Summons and Complaint or a judgment by default will be entered against you for the things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and the seal of the Court, this 10th day of March, 2017.

CHANCERY COURT HINDS COUNTY, MISS.

CLERK OF HINDS COUNTY, MISSISSIPPI

By: T. Simmons

IN THE CHANCERY COURT FOR THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

FILED
MAR 10 2017
EDDIE JEAN CARR, CHANCERY CLERK
BY T. Simmons D.C.

THE STATE OF MISSISSIPPI *ex rel.* JIM HOOD,
ATTORNEY GENERAL for the STATE of MISSISSIPPI

PLAINTIFF

v. **Civil Action No** ____________

ENDO PHARMACEUTICALS INC.

DEFENDANT

COMPLAINT

Plaintiff, the State of Mississippi, by and through its Attorney General (hereinafter "the State") files this Complaint against the above-named Defendant and alleges, on information and belief, the following:

I. INTRODUCTION

1. The Defendant has taken advantage of the enormously complicated and non-transparent market for prescription drugs by engaging in an unlawful scheme to cause the State of Mississippi to pay for drugs that were not eligible for Medicaid reimbursement and had not received approval by the Food and Drug Administration ("FDA"). The scheme involves representations by the Defendant to the State that its National Drug Codes ("NDCs") are FDA approved and eligible for Medicaid reimbursement when in fact, they are not. The State directly relies on these representations in approving the reimbursement for providers of prescription drugs. Defendant marketed these unapproved drugs to healthcare providers as being Covered Outpatient Drugs, and therefore reimbursable by the State. Defendant's fraudulent marketing of its unapproved prescription drugs has resulted in increased market share and profits for the

Defendant while causing the State to pay for Defendant's products that would otherwise not be covered by Medicaid. The Defendant's NDCs are attached hereto as Exhibit A, which includes the estimated relevant time period for each NDC at issue. The drugs listed on Exhibit A were manufactured, marketed, distributed, and/or sold during the relevant time period by Defendant, which may include its predecessor entities and/or all of its past and present components, subsidiaries, and affiliate entities, by contractual agreement and/or by having substantially the same business purpose, operation, customers, management, and/or ownership, including but not limited to Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc.

2. Fair and appropriate drug reimbursement is a matter of great importance to the State and its citizens. Expenditures by the State for prescription drug reimbursements have increased dramatically in the past several years as a result, in part, of Defendant's fraudulent scheme of marketing unapproved drugs. Each year Mississippi spends hundreds of millions of dollars on prescription drugs under the Mississippi Medicaid program. For example, in fiscal year 2011, Mississippi Medicaid spent approximately $551 million on prescription drugs. The increase in prescription-drug costs has contributed to a healthcare-funding crisis within the State that requires action to ensure fair dealing between Defendant and the State.

3. The misinformation marketed and disseminated by Defendant throughout the healthcare industry, both publicly and privately, caused claims for uncovered, ineligible products to be submitted to the State. The State, in reliance on the Defendant's representations that its drugs were eligible for reimbursement, reimbursed providers for drugs not covered by the Medicaid program.

4. The State is accountable to its citizens and taxpayers for how it spends limited State resources, and it is obligated to pursue any party whose unlawful conduct has led to the overspending of State funds. Consequently, the State, by and through its Attorney General, brings this action to recover all amounts paid for unapproved and ineligible prescription drugs by the State as a result of the fraudulent and deceptive conduct of Defendant. The State further seeks to require Defendant to account for and disgorge all profits obtained by it as a result of its improper and unlawful actions.

5. This lawsuit seeks legal and equitable redress for the fraudulent, willful and wanton reporting conduct of Defendant, who has profited from its wrongful acts and practices at the expense of the State.

II. PARTIES

6. This action is brought for and on behalf of the sovereign State of Mississippi and its citizens, by and through Jim Hood, the duly elected and current Attorney General of the State of Mississippi, pursuant to, *inter alia*, the Mississippi Constitution, Miss. Const. art. 6 § 173 (1980), the provisions of Mississippi's Medicaid Fraud Control Act, Miss. Code Ann. § 43-13-219 *et. seq.*, Mississippi's Regulation of Business for Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et. seq.*, and the common law and statutory authority of the Attorney General to represent the State of Mississippi and its residents.

7. The Defendant named in this Complaint shall include all of its predecessor entities and all of its past and present components, subsidiaries, and affiliate entities, by contractual agreement and/or by having substantially the same business purpose, operation, customers, management, and/or ownership.

Defendant

8. Defendant Endo Pharmaceuticals Inc. ("Endo" and/or "Defendant") is a Delaware corporation with its headquarters in Malvern, PA. On February 3, 2014, Defendant Endo purchased Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc., which was a Florida corporation engaged in the business of manufacturing, distributing, marketing, and/or selling pharmaceuticals with its principal place of business in Coral Springs, FL.

9. Endo, and formerly Boca Pharmacal, LLC *f/k/a* Boca Pharmacal, Inc., conducts business throughout the State of Mississippi. Endo regularly and continuously conducted business within this Judicial District and unlawfully derived substantial revenue from transactions and occurrences conducted within this Judicial District.

III. JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to Miss. Code Ann. § 9-5-81 and article 6 Section 159 of the Mississippi Constitution, in addition to the fact that all the claims asserted herein arise exclusively under Mississippi statutory or common law.

11. The State of Mississippi asserts no claims governed by federal law, as all claims herein are exclusively state law claims for relief. The State of Mississippi makes no claim that would give rise to federal jurisdiction, nor does the alignment of the named parties create federal jurisdiction.

12. The issues presented in the Complaint herein do not implicate significant or substantial federal issues and do not turn on the necessary interpretation of federal law. The State expressly asserts that the only causes of action asserted and the only remedies sought herein, are founded upon the statutory, regulatory, common, and decisional laws of the State of Mississippi.

The Complaint herein does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332 and does not invoke federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The assertion of federal jurisdiction over the claims asserted herein would improperly disturb the Congressionally-approved balance of federal and state responsibilities. Accordingly, any attempt to remove this case to federal court would be without a reasonable legal basis in fact or law.

13. This Court has personal jurisdiction over the Defendant pursuant to Miss. Code Ann. § 13-3-57 because the Defendant does business and performs work or service in this Judicial District, State and County, purposefully directs or directed its actions in this Judicial District, State and County, and/or has the requisite minimum contacts with this Judicial District, State and County necessary to constitutionally permit the Court to exercise jurisdiction.

14. Venue is proper pursuant to Miss. Code Ann. §§ 11-11-3 and 11-5-1 as this Defendant caused a substantial act or omission to occur or caused a substantial event that caused injury to the State to occur in this Judicial District and this Defendant may be found in this Judicial District. This Defendant, individually or in conjunction with others, supplies, markets, sells, promotes, advertises, distributes, and otherwise seeks Medicaid reimbursements from the State in Mississippi, and specifically, within Hinds County.

IV. STATEMENT OF FACTS

15. The Mississippi Medicaid program is a state-administered program with federal matching funds that pays for medical care, including prescription-drug benefits, for Mississippi's children and low-income, elderly, and disabled citizens. Mississippi Medicaid currently covers about 644,000 individuals. In 2008, prescription-drug benefits represented

nearly 10% of Mississippi Medicaid's annual budget. The total annual cost of prescription drugs to Mississippi Medicaid continues to increase exponentially, with an annual cost of about $488.4 million during fiscal year 2014. Mississippi Medicaid reimburses medical providers, including pharmacies, for drugs prescribed for and dispensed to Mississippi Medicaid recipients.

16. In order for its drugs to be eligible for reimbursement, the Defendant must enter into a Medicaid Drug Rebate Agreement, which requires Defendant to expressly represent which drugs are eligible for Medicaid reimbursement and submit a list of all Covered Outpatient Drugs, identified by NDC number, quarterly. Covered Outpatient Drugs are generally defined as those that may only be dispensed by prescription and are approved for safety and effectiveness as a prescription drug by the FDA. Thus, unapproved drugs, including those deemed less than effective by the FDA, and non-drug products, such as vitamins, are not Covered Outpatient Drugs eligible for reimbursement.

17. Defendant entered into the Medicaid rebate agreement. By signing the rebate agreement and participating in the Medicaid program, Defendant agreed to abide by all laws, regulations, and procedures applicable to Medicaid. Specifically, by participating in the Medicaid program, Defendant assumed a duty not to mislead the State when reporting information regarding its drugs covered by Medicaid.

18. Defendant submits lists of its Covered Outpatient Drugs to the Center for Medicare and Medicaid Services ("CMS") and reaffirms and updates those lists quarterly. The states receive these lists from CMS and continuously rely on the Defendant's information for determining drug reimbursement eligibility. The Defendant knows the states rely on these

covered drug lists. Furthermore, the Defendant expects the states to populate their covered drug formularies based upon these lists. The Defendant knew the State of Mississippi continuously reimbursed for its drugs, and thus, there existed at all relevant times a duty owed to the State and its Medicaid agency by the Defendant to inform the State of the eligibility status of its drugs on a continuing basis.

19. Reimbursement for prescription drugs under Mississippi Medicaid is based on the information supplied by the Defendant. However, the Defendant improperly reported that its NDCs were Covered Outpatient Drugs eligible for reimbursement, and the State relied upon this representation on a continuing basis when reimbursing for drugs in the Medicaid program. At all times relevant to this action, Defendant was aware of the State of Mississippi's Medicaid drug reimbursement procedures and its use and reliance upon the drug information reported by the Defendant. Each and every time the Defendant caused the State to reimburse for an ineligible drug listed in Exhibit A is a violation of Mississippi law.

Defendant's Marketing of Unapproved Drugs

20. Defendant knowingly, willfully, wantonly, and/or intentionally provided or caused to be provided inaccurate information for its drugs to the CMS and various nationally known drug industry reporting services. Pursuant to its rebate agreement, Defendant was required to reaffirm and update the list of its Covered Outpatient Drugs to CMS on a quarterly basis. Defendant additionally had a duty to inform the State of the eligibility status of its drugs on a continuing basis. Defendant, however, represented that its NDCs were Covered Outpatient Drugs, and thus eligible for Medicaid reimbursement, when in fact they were not.

21. Defendant intentionally reported unapproved drugs, non drug products (products not covered by the FDA), and/or products deemed less than effective by the FDA as Covered Outpatient Drugs. All of these products are ineligible for Medicaid reimbursement.

22. Defendant perpetrated this scheme of reporting false FDA approval information and marketing unapproved and ineligible drugs for the drugs listed in Exhibit A.

23. CMS and the reporting services published the information to various reimbursers, such as the State of Mississippi's Medicaid agency.

24. The false information disseminated by Defendant throughout the healthcare industry was and is used by the State of Mississippi with respect to reimbursement for prescription drugs. At all relevant times to this action, the State's Medicaid agency relied on the representations provided by Defendant to CMS and the healthcare industry in determining whether the drugs were eligible for Medicaid reimbursement.

25. Defendant knew that by submitting false information concerning its drugs, it would cause the State to pay for unapproved and ineligible drugs. Defendant misled the State Medicaid agency into believing the drugs at issue were Covered Outpatient Drugs and therefore reimbursable.

26. Defendant knowingly, willfully, wantonly, and/or intentionally concealed the true status of its respective drugs from the State's Medicaid agency. Defendant knew its drugs were not eligible for Medicaid reimbursement. Defendant also knew that reporting and publishing false information would cause the State to pay for drugs not rightfully reimbursable.

27. Unless governmental or industry surveys, lawsuits, or criminal or regulatory investigations publicly reveal the true nature of a particular drug at issue, the State of

Mississippi's Medicaid agency, like other state Medicaid agencies, is not privy to the true reimbursement eligibility of NDCs. Defendant has concealed the true nature of its drugs' approval statuses from the State for the purpose of avoiding detection of the fraudulent scheme described herein.

28. Defendant fraudulently reported certain prescription drugs as Covered Outpatient Drugs eligible for reimbursement and marketed them to physicians, pharmacists, and others in the healthcare industry as being Covered Outpatient Drugs. For each time period listed for the NDCs in Exhibit A, the Defendant reported that the NDC was an FDA approved drug eligible for reimbursement every quarter during the time period. The Defendant also continuously caused the State to believe its drugs were eligible for reimbursement. As a result of this fraudulent scheme, Defendant has prevented third parties, including the State's Division of Medicaid, from determining that said drugs were not eligible for Medicaid reimbursement.

29. The Defendant's unlawful conduct, as outlined above, conferred a benefit upon the Defendant in the form of increased market share and resulting increased profits. The Defendant has retained and continues to retain the benefits conferred upon it as a result of its unlawful conduct, to the detriment of the State of Mississippi.

30. The unfair, fraudulent, wanton, and deceptive practices engaged in by Defendant in creating and reporting, or causing to be reported, false approval information for its drugs, or otherwise concealing the true nature of its drugs as an inducement to providers to utilize Defendant's drugs, has resulted in the State paying for unapproved drugs, while at the same time enriching Defendant with excessive, unjust, and illegal profits.

Other Lawsuits, Settlements, Government Investigations, and Criminal Proceedings

31. The State's Complaint was not drafted in a vacuum. Many pharmaceutical manufacturers have already been sued for the same or similar Medicaid fraud scheme in a *qui tam* case. *United States ex rel. Conrad v. Abbott Labs. Inc.*, Civil Action No. 02-CV-11738-RWZ (D. Mass., Sept. 26, 2011) (Doc. 260, Tenth Amended Complaint). A number of states have moved to intervene in that action.

32. Published opinions and other public documents generated in the course of this parallel federal litigation reveal that those Defendant fraudulently marketed its drugs as Covered Outpatient Drugs, and thus, eligible for reimbursement. The federal court has previously denied a Motion to Dismiss filed by Healthpoint, LTD in the unapproved drug *qui tam* case. The Department of Justice press release states in part:

> *The government's complaint alleges that Healthpoint knew Xenaderm was unapproved, and knew of or recklessly disregarded the FDA notices concerning trypsin's lack of effectiveness as a debriding agent. According to the complaint, Healthpoint nonetheless falsely represented to the United States that the drug was eligible for Medicaid and Medicare reimbursement. As a result of Healthpoint's false statements, the United States alleges that Healthpoint caused Medicaid and Medicare to pay tens of millions of dollars for an unapproved drug that was ineligible for reimbursement.*
>
> *"The problem with unapproved drugs is that FDA does not know what is in them, whether they are effective or safe, or how they are made," said FDA Commissioner Margaret M Hamburg, MD. "FDA routinely works together with companies to ensure that safe, effective products are available for Americans. As this case demonstrates, when companies place consumers at risk by selling drugs without required FDA approval, they should not profit from that."*

33. With respect to Healthpoint's Motion to Dismiss, the Court held in part:

> *Here, the government alleges that between 2002 and 2006, Healthpoint, on quarterly statements submitted to the Centers for Medicare and Medicaid Services, recklessly coded Xenederm as eligible for reimbursement - when in fact it was not. And it charges that these submissions were "material to*

> *the claims for government reimbursement for Xenederm." Docket # 217 at 70-71. These allegations adequately provide "the who, what, where, and when of the allegedly false claim and satisfy the flexible" Gagne formulation for pleading sufficiency in the FCA context. Duxbury, 579 F.3d at 29.*

34. The State of Mississippi believes that the above-described fraudulent scheme was utilized by the Defendant in this case.

35. Federal criminal actions have been instituted against manufacturers related to unapproved drugs. As part of the criminal proceedings, various drug companies pleaded guilty to and/or agreed to settle criminal charges for having engaged in unlawful marketing with respect to certain of their prescription drugs reimbursed under federal programs, such as Medicare, and state programs, such as Medicaid. These manufacturers paid fines and civil penalties for this admittedly wrongful conduct.

36. The guilty pleas, settlements, and admissions of fault by these manufacturers demonstrate that this conduct is a far-reaching and widespread scheme in the pharmaceutical industry to unlawfully market unapproved drugs to increase profits for their products. For example, in 2010, Forest Pharmaceuticals, Inc. agreed to pay more than $313 million to settle criminal and civil liability arising from Forest's marketing of unapproved drugs. Forest pleaded guilty to distributing an unapproved drug into interstate commerce. The DOJ press release stated:

> *Today, U.S. District Judge Nancy Gertner, sentenced drug manufacturer FOREST PHARMACEUTICALS, INC. to pay a criminal fine of $150 million and forfeit assets of $14 million following the company's guilty plea last year.*
>
> *"Today's sentencing of Forest Pharmaceuticals is a victory for the*

> *system designed to protect patients from potentially harmful prescription drugs," said Daniel R. Levinson, Inspector General of the Department of Health & Human Services. "Attempts to circumvent that system by selling misbranded and unapproved drugs simply will not be tolerated."*

37. Government investigations by the FDA also revealed fraudulent drug approval schemes by various manufacturers. For example, the FDA has publicly stated that unapproved drugs pose significant harm to the public, including Mississippi Medicaid recipients. In fact, the FDA has acknowledged that there are unapproved drugs being marketed without FDA approval:

> *The Agency has serious concerns that drugs marketed without required FDA approval may not meet modern standards for safety, effectiveness, quality, and labeling. Physicians and other healthcare practitioners, along with consumers, cannot assume that all marketed drugs have been found by the FDA to be safe and effective. For a variety of historical reasons, some drugs, mostly older products, continue to be marketed illegally in the U.S. without required FDA approval. The manufacturers of unapproved drug products have not received FDA approval and do not conform to a monograph for making over-the-counter (OTC) drugs. The lack of evidence demonstrating that these unapproved drugs are safe and effective is a significant public health concern.*

www.fda.gov

38. Defendant's scheme of tricking the system into believing certain drugs have FDA approval has been long lasting and well hidden from the rest of the healthcare industry. As noted by the FDA:

> *Many healthcare providers are unaware of the unapproved status of drugs and have continued to unknowingly prescribe them because the drugs' labels do not disclose that they lack FDA approval. In addition, since many unapproved drugs are marketed without brand names and have been available for many years, it is often assumed that these unapproved drugs are generic drugs. This is not correct.*

> *Unapproved drug products have not been evaluated and approved by FDA. Unapproved drugs are* not *generic medications, and neither their safety nor their efficacy can be assured.*

www.fda.gov

39. Some of the conduct described herein goes back over several years prior to the filing of this Complaint. As explained above, however, the nature and extent of the fraudulent scheme were not known to the State because information concerning the true nature that should have been submitted to the reporting services was concealed and not publicly available. It has only been through regulatory investigations, criminal actions, and civil actions that the impact of the fraudulent scheme on the State has been indicated or revealed. Even today, the true nature of many of the drugs in question for the entire time period at issue is not known by the State.

40. For purposes of specificity of pleading (particularly with respect to the fraud allegations), suffice it to say that Defendant is and has been on notice of the claims asserted herein as a result of the many investigations and actions undertaken around the country on this same subject. Indeed, Defendant should know, without further allegation from the State, exactly which unapproved drugs are being marketed and being reimbursed by Mississippi Medicaid.

V. DAMAGES

A. Damages to State

41. The foreseeable and intended consequences of the Defendant's conduct has been to bilk the State of Mississippi and its taxpayers out of Medicaid dollars through its fraudulent

scheme. Liquidated damages to the State are estimated at $1,518,293.04.

42. In particular, as a direct result of Defendant's illegal scheme, the State of Mississippi has made excess Medicaid payments for the unapproved drugs.

43. The State seeks to recover these costs, actual damages and/or restitution as well as injunctive relief to halt the Defendant's pilfering of this vital State program and an accounting of all profits or gains derived in whole or in part by the Defendant through its fraudulent, unfair, and/or deceptive acts or practices complained of herein.

B. Damages to Taxpayers

44. The foreseeable and intended consequences of the Defendant's conduct has also resulted in increased strain on the wallets and personal budgets of Mississippi's taxpayers whose income taxes go to fund Mississippi's Medicaid program. As noted, if the Defendant had properly reported these drugs as not Medicaid-reimbursable, the State would have never paid for the drugs nor paid disbursement fees to pharmacists.

C. Damages to Beneficiaries

45. The foreseeable and intended consequences of the Defendant's conduct have also resulted in injuries to the poor and disabled beneficiaries of the Mississippi Medicaid program. The direct result of the Defendant's actions has been the reduction of pharmaceutical benefits.

VI. CAUSES OF ACTION

a. Violations of Mississippi Medicaid Fraud Control Act

46. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

47. Defendant's reporting of its products as Covered Outpatient Drugs eligible for

reimbursement for purposes of obtaining Medicaid reimbursements for providers in return for an increase in market share, constitutes a violation of Mississippi's Medicaid Fraud Control Act ("MFCA"), Miss. Code Ann. § 43-13-201, *et seq.*

48. By knowingly and willfully providing and/or publishing NDCs and falsely representing prescription drugs as being Covered Outpatient Drugs with knowledge that providers' claims for reimbursement from the State's Medicaid program are based upon those misrepresentations, all in order to increase its market share, Defendant unlawfully submitted and/or caused false claims to be submitted to the Mississippi Medicaid program in violation of Miss. Code Ann. § 43-13-213.

49. Defendant further violated the MFCA by fraudulently concealing the falsity and inaccuracy of its unapproved drugs from the State and its Medicaid agency.

50. As the actual and proximate result of Defendant's violations of the MFCA, the State has suffered actual damages by paying for drugs that were not eligible for Medicaid reimbursement.

51. Defendant is directly liable to the State for damages including civil penalties equal to the full amount received by the Defendant, plus an additional civil penalty equal to triple the full amount received by the Defendant. Miss. Code Ann. § 43-13-225.

b. Violations of Mississippi Consumer Protection Act

52. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

53. Defendant's reporting of FDA approval for its drugs, and reporting its drugs as Covered Outpatient Drugs eligible for reimbursement to consumers within the stream of

commerce, knowing that the State would use them to authorize Medicaid reimbursements, constitutes unfair and deceptive practices in violation of the Mississippi Consumer Protection Act ("MCPA"), Miss. Code Ann. § 75-24-1, *et seq.*

54. In the course of trade or commerce, Defendant intentionally, fraudulently, and deceitfully reported or caused to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for prescription drugs, resulting in larger market share and/or profits for Defendant, in violation of Miss. Code Ann. § 75-24-5.

55. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant has used unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce in violation of § 75-24-5(1).

56. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, the Defendant violated § 75-24-5(2)(b) by misrepresenting the source, sponsorship, approval or certification of the goods.

57. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in

Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(c) by misrepresenting the affiliation, connection, or association with, or certification by another of the goods.

58. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(e) by representing that goods have characteristics or benefits or quantities that they do not have or that the Defendant has approval for its drugs that it does not have.

59. By intentionally, fraudulently, and deceitfully reporting or causing to be reported drugs not approved by the FDA and not eligible for reimbursement for the purpose and with the intent to induce the State to pay Medicaid reimbursements for each of its products listed in Exhibit A, resulting in larger market share and/or profits for the Defendant, the Defendant violated § 75-24-5(2)(g) by representing that the goods are of a particular standard, quality, or grade.

60. Defendant knew or should have known that the State of Mississippi relied upon its representations pertaining to Covered Outpatient Drugs in making reimbursement payments for prescription drugs. Therefore, there existed at all relevant times, a duty owed to the State and its Medicaid agency, by Defendant, not to mislead the State when providing and/or reporting NDCs and the approval status of its drugs and to inform the State of the true eligibility status of its drugs.

61. As the actual and proximate result of Defendant's unfair and deceptive practices,

the State has suffered actual damages by paying grossly excessive amounts for unapproved drugs.

62. This action is brought pursuant to Miss. Code Ann. § 75-24-1 *et. seq.*, including but not limited to: § 75-24-5, § 75-24-9, § 75-24-11, § 75-24-15, for injunctive relief, compensatory damages, restitution, and any other orders or judgments as may be necessary to restore to the State any monies or property acquired by means of any unfair or deceptive trade practices in or affecting the stream of commerce.

63. The Attorney General has statutory authority to bring an action in the name of the state against any person that he has reason to believe "is using, has used, or is about to use" any method constituting a violation of the MCPA. As alleged herein, the Defendant's actions constitute unfair and deceptive practices in violation of the MCPA entitling the Attorney General to seek a permanent injunction. Miss. Code Ann. § 75-24-9.

64. Furthermore, because the Defendant willfully used or are using unfair and/or deceptive trade acts or practices, it is liable for civil penalties not to exceed Ten Thousand Dollars ($10,000.00) per violation. Miss Code Ann. § 75-24-19. Each and every time the Defendant caused the State to reimburse for an ineligible drug listed in Exhibit A is a violation of the MCPA.

c. Fraud

65. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

66. By knowingly and willfully providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of

Mississippi, when in fact the drugs were not eligible for reimbursement, Defendant engaged and continues to engage in repeated fraudulent acts and practices, resulting in larger market share and/or profits for the Defendant, thus committing fraud against the State of Mississippi.

67. Knowing that the State of Mississippi relies upon its reported NDCs and FDA approval information in making reimbursement payments for only approved and eligible drugs, there existed at all relevant times a duty owed to the State and its Medicaid agency, by Defendant, not to mislead the State when providing and/or reporting NDCs and eligibility statuses of drugs and to inform the State of the true eligibility status of its drugs.

68. Defendant knowingly and intentionally made or caused to be made false and misleading statements and representations regarding prescription drug approval in reporting of NDCs as Covered Outpatient Drugs eligible for reimbursement, on a periodic and continuing basis, for publication and dissemination to the State of Mississippi and its Medicaid agency with the intent to increase its market share and/or profits.

69. Defendant made these false representations that its prescription drugs were Covered Outpatient Drugs, knowing they were false and/or with reckless disregard of its truth.

70. Defendant knew the false representations of the unapproved prescription drug eligibility made to the State and its Medicaid agency were to be used as the basis for Medicaid reimbursements and were therefore material.

71. Defendant fraudulently concealed the falsity and inaccuracy of the unapproved and ineligible statuses from the State and its Medicaid agency.

72. Defendant misrepresented the drug eligibility with the intent to induce the State of Mississippi and its Medicaid agency to rely on the fraudulent reimbursement eligibility of NDCs

and pay Medicaid reimbursements for ineligible products, resulting in larger market share and/or profits for the Defendant.

73. The State of Mississippi and its Medicaid agency did not know of the fraudulent eligibility representations for these drugs and had a right to rely on the drug eligibility representations made by Defendant.

74. The State of Mississippi and its Medicaid agency reasonably relied upon the Defendant's report of Covered Outpatient Drugs and eligibility information in order to reimburse providers.

75. As an actual and proximate result of Defendant's fraudulent conduct, and the State of Mississippi's reasonable reliance thereon, the State has paid too much in connection with purchases or reimbursements of purchases of Defendant's unapproved and ineligible drugs, resulting in larger market share and/or profits for the Defendant.

76. Defendant's misrepresentations are continuing, as it regularly and periodically continues to issue, or causes to issue, false eligibility information and false FDA approval information for publication.

77. The State and its Medicaid agency are entitled to judgment against Defendant for the pecuniary loss suffered as a direct and proximate result of the Defendant's fraudulent conduct.

d. Negligent Misrepresentation

78. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

79. By providing, publishing, and/or causing to be published NDCs as Covered

Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement, resulting in larger market share and/or profits for the Defendant, Defendant made and continues to make negligent misrepresentations to the State of Mississippi.

80. There existed at all relevant times, legal duties owed to the State by Defendant to provide accurate information to the State when providing and/or reporting the eligibility of its prescription drugs.

81. Defendant breached its duties to provide accurate information to the State by affirmatively providing false and misleading statements regarding the unapproved nature and reimbursement eligibility of its drugs and failing to inform the State when it unknowingly reimbursed for an ineligible drug.

82. The State of Mississippi and its Medicaid agency did not know of the ineligibility of the drugs and had a right to rely on the representations made by Defendant.

83. The State of Mississippi and its Medicaid agency reasonably relied upon the Defendant's false report of Covered Outpatient Drugs and eligibility information in order to reimburse providers.

84. As an actual and proximate result of Defendant's misrepresentations, and the State of Mississippi's reasonable reliance thereof, the State has been damaged by paying for unapproved, ineligible drugs, resulting in larger market share and/or profits for the Defendant.

85. The State and its Medicaid agency are entitled to judgment against Defendant for restitution and civil penalties for the losses incurred by the State of Mississippi, and its citizens, as a direct and proximate result of Defendant's misrepresentations.

e. Unjust Enrichment

86. The State hereby repeats, incorporates by reference and re-alleges each and every allegation set forth above in this Complaint.

87. By knowingly providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs eligible for reimbursement by the State of Mississippi, when in fact the drugs were not eligible for reimbursement, for purposes of gaining an economic advantage through an enlarged market share, Defendant has been unjustly enriched.

88. Defendant's unlawful conduct, as outlined above, conferred a benefit upon Defendant in the form of increased market share and resulting increased profits.

89. Defendant has retained and continues to retain the benefits conferred upon it as a result of its unlawful conduct, to the detriment of the State of Mississippi.

90. Defendant's retention of such benefits is unjust, as they were obtained by fraudulently providing, publishing, and/or causing to be published NDCs as Covered Outpatient Drugs for unapproved drugs and drugs not eligible for reimbursement to the State with the knowledge that the State would rely on such representations to its detriment.

91. As a result of these false and misleading statements and representations, the State has paid for drugs which would not otherwise be reimbursable.

92. Defendant knew it was not entitled to the profits that resulted from the sales obtained through the use of marketing unapproved drugs. The Defendant should be required to account for and make restitution to the State of all such amounts obtained through the use of such misrepresentations.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, the State of Mississippi, by and through Jim Hood, its duly elected Attorney General, requests that this Court grant the following relief against the Defendant as follows:

(1) an order enjoining the Defendant from continuing the fraudulent, deceptive and/or unfair acts or practices complained of herein, and requiring correcting measures;

(2) an award of compensatory damages to the State in such amount as is proved at trial;

(3) an award of all civil penalties provided for by statute;

(4) an award of punitive damages;

(5) an accounting of all profits or gains derived in whole or in part by the Defendant through its fraudulent, unfair and/or deceptive acts or practices complained of herein;

(6) a constructive trust of the moneys illegally and impermissibly obtained from the Defendant's scheme;

(7) an order imposing a constructive trust on and/or requiring disgorgement by the Defendant of all profits and gains earned in whole or in part through the fraudulent, unfair and/or deceptive acts or practices complained of herein;

(8) an award of costs and prejudgment and post judgment interest;

(9) an award of all attorneys' fees and costs; and

(10) such other and further relief as the Court may deem appropriate and just.

RESPECTFULLY SUBMITTED, this the 10th day of March, 2017.

STATE OF MISSISSIPPI
JIM HOOD, ATTORNEY GENERAL

By: ______________________
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EXHIBIT A

Manufacturer	NDC	Min Date of Service	Max Date of Service
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376003201	2/17/2005	11/15/2007
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376003301	3/5/2005	12/22/2005
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376043740	2/13/2008	11/3/2009
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376050101	7/9/2002	2/3/2003
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376050105	4/19/2002	6/28/2003
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376053001	2/28/2005	11/5/2009
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376053201	11/21/2003	12/9/2008
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054301	9/1/2005	5/5/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054331	7/27/2005	5/3/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054401	10/17/2005	5/7/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054431	7/7/2005	11/13/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376054601	2/12/2007	2/22/2010
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376071416	2/21/2005	4/21/2012
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376071616	9/28/2005	9/28/2005
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072116	10/17/2003	4/19/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072830	5/31/2006	12/1/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072916	7/25/2006	10/5/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376072940	4/20/2006	7/13/2011
Endo Pharmaceuticals Inc. d/b/a Boca Pharmacal, LLC f/k/a Boca Pharmacal, Inc.	64376073716	7/15/2008	1/7/2011

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

STATE OF MISSISSIPPI *ex rel.* JIM HOOD, ATTORNEY GENERAL for the STATE OF MISSISSIPPI — **PLAINTIFF**

v — **CAUSE NO.: 25CH1:17cv309**

ENDO PHARMACEUTICALS INC. — **DEFENDANT**

NOTICE OF FILING OF NOTICE OF REMOVAL

Defendant Endo Pharmaceuticals Inc. ("Endo") advises this Court that today they filed a Notice of Removal of the above-captioned action in the United States District Court for the Southern District of Mississippi, Northern Division. A copy of the Notice of Removal, exclusive of exhibits, is attached to this Notice as Exhibit "A."

In accordance with the provisions of 28 U.S.C. § 1446, this Court shall proceed no further unless the case is remanded by order of the United States District Court for the Southern District of Mississippi.

This the 17th day of April, 2017.

Respectfully submitted,

ENDO PHARMACEUTICALS INC.

By Its Attorneys,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

By: *_/s/ David F. Maron_*
DAVID F. MARON

EXHIBIT B

OF COUNSEL:

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Samuel D. Gregory (MB No. 104563)
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CERTIFICATE OF SERVICE

I do hereby certify that on this day the foregoing document was filed electronically with the Clerk of the Court using the Court's MEC system, which served a true and correct copy of such filing electronically on the following counsel of record:

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William T. May
BARRY THAGGARD MAY & BAILEY LLP
505 Constitution Avenue
Meridian, MS 39301

This the 17th day of April, 2017.

/s/David F. Maron
David F. Maron

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

State of Mississippi ex rel. Jim Hood, Attorney General for the State of Mississippi

(b) County of Residence of First Listed Plaintiff ____________
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
George W. Neville, Jacqueline H. Ray
OFFICE OF THE MISSISSIPPI ATTORNEY GENERAL
P. O. Box 220, Jackson, MS 39205

DEFENDANTS

Endo Pharmaceuticals Inc.

County of Residence of First Listed Defendant ____________
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
David Maron, Baker Donelson Bearman Caldwell & Berkowitz, PC
One Eastover Center, 100 Vision Dr, Suite 400, Jackson, MS 39211
601-351-2400

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
21 U.S.C. Section 301 et seq., 42 U.S.C. Section 1396 et seq.

Brief description of cause: Plaintiff asserts various state law claims, each of which is premised upon substantial and disputed issues of federal law, namely the Social Security Act and the Food, Drug, and Cosmetic Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE	DOCKET NUMBER
Daniel P. Jordan, III	3:17cv00266
William H. Barbour, Jr.	3:17cv00267
Tom S. Lee	3:17cv00268
Tom S. Lee	3:17cv00269

DATE
04/17/2017

Signature of Attorney of Record

FOR OFFICE USE ONLY

RECEIPT # ________ AMOUNT ________ APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________